



NOTICE OF TEXT

[Authority G.S. 150B-21.2(c)]

OAH USE ONLY

VOLUME:

ISSUE:

CHECK APPROPRIATE BOX:

- ☒ Notice with a scheduled hearing
☐ Notice without a scheduled hearing
☐ Republication of text. Complete the following cite for the volume and issue of previous publication, as well as blocks 1 - 4 and 7 - 13. If a hearing is scheduled, complete block 5.
Previous publication of text was published in Volume: Issue:

1. Rule-Making Agency: State Ethics Commission

2. Link to agency website pursuant to G.S. 150B-19.1(c): www.ethicscommission.nc.gov

3. Proposed Action -- Check the appropriate box(es) and list rule citation(s) beside proposed action:

☐ ADOPTION:

☐ READOPTION with substantive changes:

☐ READOPTION without substantive changes:

☒ AMENDMENT: 30 NCAC 9B .0101; 30 NCAC 10D .0401

☐ REPEAL:

4. Proposed effective date: September 1, 2016

5. Is a public hearing planned? ☒ Yes ☐ No

If yes: Public Hearing date: August 12, 2016

Public Hearing time: 9:00 a.m.

Public Hearing Location: Capehart Crocker House, Commission Meeting Room, 424 N. Blount Street
Raleigh, NC 27601

6. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

7. Explain Reason For Proposed Rule(s): To clarify the decision to be made by the Commission when it is referred a complaint from a Commission panel because the panel members disagree.

8. Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

☐ Rule(s) is automatically subject to legislative review. Cite statutory reference:

9. The person to whom written comments may be submitted on the proposed rule(s):

Name: Lisa Johnson

Address: 1324 Mail Service Center
Raleigh, NC 27699-1324

Phone (optional): 919-814-3610

Fax (optional): 919-715-2059

E-Mail (optional): lisa.johnson@doa.nc.gov

10. Comment Period Ends: August 11, 2016

11. Fiscal impact (check all that apply).

If this form contains rules that have different fiscal impacts, list the rule citations beside the appropriate impact.

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (\geq \$1,000,000)
- ☐ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

12. Rule-making Coordinator: Pamela C. Cashwell

Address: 1324 Mail Service Center
Raleigh, NC 27699-1324

Phone: 919-814-3600

E-Mail: pam.cashwell@doa.nc.gov

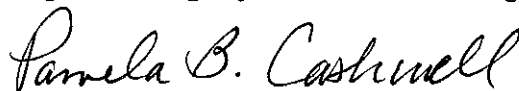
Agency contact, if any: Lisa Johnson

Phone: 919-814-3610

E-mail: lisa.johnson@doa.nc.gov

13. The Agency formally proposed the text of this rule(s) on
Date: May 24, 2016

14. Signature of Agency Head* or Rule-making Coordinator:



*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Pamela C. Cashwell

Title: Rulemaking Coordinator

SUBCHAPTER 09B - PRELIMINARY INQUIRY AND PROBABLE CAUSE DETERMINATION

30 NCAC 09B .0101 INQUIRY AND PROBABLE CAUSE PANELS

(a) The preliminary inquiry and the determination of probable cause shall be made by a Commission panel of two Commission members, who shall not be of the same political party. The Chair shall appoint members of the panel to serve on a rotating basis. The Chair may appoint substitute panel members.

(b) After a preliminary inquiry, the Commission panel may dismiss a complaint if it determines the following:

(1) that the individual against whom the complaint was filed is not a covered person or legislative employee; or

(2) that the complaint did not allege facts sufficient to constitute a violation under G.S. 138A-12(b).

(c) If the Commission panel members cannot agree at the preliminary inquiry stage as to whether the complaint alleges facts sufficient to constitute a violation, the matter shall proceed to an investigation.

(d) If the Commission panel members disagree on the probable cause determination, the complaint shall proceed to the Commission for a the probable cause determination with the panel members recusing themselves from voting.

History Note: Authority G.S. 138A-10(a)(2); 138A-10(a)(5); 138A-10(a)(6); 138A-10(a)(10); 138A-12; Eff. January 1, 2011; June 1, 2014; Amended Eff. September 1, 2016

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(a) For complaints initiated pursuant to Rule .0202(2) of this Subchapter, Commission staff shall present the investigative report to the same Commission panel that conducted the preliminary inquiry or a substitute panel appointed pursuant to Rule .0105 of this Subchapter.

(b) The Commission panel shall review the investigative report and shall take one or more of the following actions regarding the Article 1, 3, 5, and 7 allegations:

- (1) direct Commission staff to conduct further investigation or obtain additional information;
- (2) recommend that the Commission refer the lobbying complaint to another agency;
- (3) recommend that the Commission dismiss the lobbying complaint or specific allegations within the complaint for lack of a violation of Article 1, 3, 5, or 7 of G.S. 120C.
- (4) recommend that the Commission find a violation of Article 1, 3, 5, or 7 of G.S. 120C and that a specific sanction or sanctions should be imposed. A violation shall be shown to exist by a preponderance of the evidence.

(c) Recommendations shall be presented to the Commission no later than at the next regularly scheduled quarterly Commission meeting.

(d) If the panel members disagree on a decision under this Rule, the complaint shall go before the Commission for a decision pursuant to Rule .0404 of this Subchapter, with the panel members recusing themselves from voting.

*History Note: Authority G.S. 120C-101(a); 120C-601;
Eff. June 1, 2014.
Amended Eff. September 1, 2016*